

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION
CRIMINAL WRIT PETITION NO.3212 OF 2005

Inayatullah Hazi Mohd Sayeed.. Petitioner

versus

State of Maharashtra & ors.. Respondents

Mr.V.M.Thorat,Advocate for Petitioner
 Mr.A.P.Mundargi with Mr.J.D.Khairnar
 & Mr.N.R.Bubna for Respondent no. 2
 Ms.A.S.Pai,A.P.P.for Respondent-State

CORAM : J.N.PATEL AND
SMT.ROSHAN DALVI, JJ
DATED : 6th October, 2006

P.C.

1. This petition came to be filed by one of the
 witnesses in Crime No.170/2001 which has culminated
 into filing of a charge sheet and is registered as

Sessions Case No.1023 of 2002. The witness has sought transfer of the trial from the Court of Sessions at Malegaon, District Nasik out of the jurisdiction of Nasik with a direction that criminal cases pending against the respondent no. 2 and other case pending in the Court of Sessions Judge, Malegaon to be disposed of with further directions within a stipulated period and that the Sessions Judge should decide the application for cancellation of bail of respondent no.2 in Sessions Case No.1023 of 2002 within a period of two months and also direct the State Government to appoint a Special Public Prosecutor to try the criminal cases pending against the respondent no.2 in Sessions Court, Malegaon.

2. From the allegations made in the petition, this Court expressed shock and surprise and expressed it in its order dated 18th August, 2006 which speaks for itself. In response to the order passed by this Court on 18th August, 2006 the Additional Chief Secretary, Home Department, Mr.Rajvardhan, Superintendent of Police, Nasik (Rural) have filed their affidavit in reply so also we have received a report from the District Judge and Additional Sessions Judge, Malegaon, District Nasik in whose

Court Sessions Case No.1023 of 2002 is pending.

3. Learned counsel appearing for the petitioner submitted that the petitioner has filed rejoinder to the affidavit filed by the respondents including respondent no.2 who is one of the accused in the case and happens to be M.L.A. of the area.

4. The main contention of the petitioner appears to be about the case pending against the M.L.A. being not tried expeditiously. The petitioner has expressed that the victims would not get justice if the case is not transferred and has also sought appointment of a Special Prosecutor.

5. The petitioner-witness is the real brother of the victim. Therefore, after considering the allegations made in the petition, the affidavit in reply from the independent authorities of the highest level in the State and also the District and Additional Sessions Judge, Malegaon, we are more than satisfied that this is a frivolous petition filed by the petitioner to seek transfer of the cases on a false apprehension that he will not get justice if the matter is tried in the Court at Malegaon and allegations that members of the bar

are obstructing the course of justice and trial of the respondent no. 2 at Malegaon cannot be held in a impartial manner.

6. We find that this is a case of abuse of the process of this Court. Therefore, we propose to dispose of the petition with compensatory costs.

7. Learned counsel for the petitioner submitted that atleast the petitioner's prayer for appointment of a Special Public Prosecutor may be allowed.

8. In so far as this relief sought for by the petition is concerned, he can very well approach the State Government in the matter and without doing so, the petitioner has sought a Writ of Mandamus from this Court for the said reliefs.

9. Therefore, we dismiss the petition with compensatory costs which we quantify at Rs.10,000/-.

10. The petitioner to deposit the costs in the office of the District and Sessions Judge, Malegaon, Nasik which shall be credited in the

account of the District Legal Aid Committee.

11. The costs to be deposited within a period of four weeks from the date of passing of this order. On failure on the part of the petitioner to deposit the costs as directed, the Collector, District Nasik would recover the same as fine by resorting to the provisions of the Maharashtra Land Revenue Code.

(Smt R.S.Dalvi,J)

(J.N.Patel,J)